

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7066 of 1992

with

SPECIAL CIVIL APPLICATIONS NO. 3019/94, 3273/94, 3275/94,
3327/94, 3387/94, 3487/94, 3641/94, 4800/94, 4978/94 AND
5372/94.

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

KESHARBHAI NARSANGBHAI GHOYA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Applications No.7066/92, 3019/94, 3273/94, 3327/94, 3387/94 AND 5372/94.
MR SR BRAHMBHATT for Petitioners
MR KAMAL MEHTA, AGP for Respondent No. 1
SERVED for Respondent No. 2, 4
MR HS MUNSHAW for Respondent No. 3
2. Special Civil Applications No.3291/94, 3487/94, 3641/94, 4800/94 and 4978/94.
MR JD AJMERA for Petitioners
MR KAMAL MEHTA, AGP for Respondent No. 1

SERVED for Respondent No. 2, 4

MR HS MUNSHAW for Respondent No. 3

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 14/07/97

ORAL JUDGEMENT

1. This group of petitions is directed against the orders passed by the Taluka Development Officer, Palanpur Taluka, district Banaskantha. The petitions are filed by Primary Teachers of Banaskantha district when orders of transfer enmasse came to be passed against them, which orders were challenged by the teachers either individually or through their association by filing various Special Civil Applications in the High Court. Initially, the High Court of Gujarat by interim order stayed the orders of transfer and also directed that such teachers be paid their salaries regularly. Some of those teachers are before this Court in this group of petitions.

2. It appears that, in the said group of petitions, a consent order came to be passed and the parties affected by the impugned orders of transfer of teachers which were passed by the District Primary Education Officer reached certain consent terms, which were recorded into writing and were signed by the learned Advocates appearing for the petitioners as well as by the Advocates appearing for respondents No.3 to 5, which would include the District Primary Education Officer. The said consent terms which were reduced to writing are reproduced hereunder, so as to bring out the crux of the present controversy between the parties :-

"In the facts and circumstances of the case, the affected parties have arrived at the following terms:

- (1) The petitioners and the persons whom they represent, mentioned in the list at Annexure 'B' to the petitions (hereinafter referred to as the 'Petitioners'), may make a joint or separate representation to the Secretary to the Government of Gujarat, Education Department, in regard to the dispute raised in the petition, so as to reach him by 24th November, 1986. The Secretary will consider the same on merits, after hearing the parties, within ten days of the receipt of

the representation, by a speaking order, and communicate the same to the petitioners' Advocates.

(2) Pending the decision of the Secretary and for ten days after the communication of the same to the petitioners' Advocates -

(a) the transfers of the petitioners, who have not resumed at the places of their transfer and who have been transferred outside Palanpur, Vadgam and Kankrej Talukas from Schools, within these Talukas, will be stayed and will not be implemented, and

(b) the transfers of the petitioners who have been transferred from the Schools in Palanpur, Vadgam and Kankrej Talukas to other schools within these Talukas will also be stayed and not implemented.

The petitioners will not resume their duty at the original places of work from where they are transferred.

(3) However, the transfers of teachers who have already resumed at the places of transfer will not be affected or stayed, pending the decision of the Secretary, but they will abide by the final orders that may be issued by the Secretary. Similarly, transfer of teachers from schools within Palanpur, Vadgam and Kankrej Talukas to schools within these Talukas respectively shall not be stayed and will be implemented, if such transfers have been made to schools in these Talukas without any teacher as on the date of this order. Further, the transfers of teachers who have resumed at the places of their transfer are not stayed and will not be affected, pending the decision of the Secretary.

(4) In respect of the period prior to 30.10.1986, the petitioners who have not resumed duty at the places of transfer or who have resumed duty late, will be paid salary on the basis that they were on leave, if any leave is due to them, if no leave is due, the period will be treated as leave without pay and the said period shall be treated as leave period. They

will be paid salary by the Panchayat for the period of vacation, i.e. from 30.10.1986 onwards, till the communication of the decision of the Secretary and ten days thereafter, without being required to join at the places to which they have been transferred, subject however to clause 2(b) above."

3. From the consent terms which are reproduced hereinabove and which were identical in nature in group of other petitions then decided by the learned single Judge of this Court, the Primary Teachers and the persons whom they represented were directed to make a joint or separate representation to the Secretary to the Government of Gujarat, Education Department. The Secretary was directed to consider such representation on merits after hearing the parties. The decision reached by the Secretary was to be communicated to the learned Advocates of the petitioners and it was agreed that petitioner-teachers will not resume their duties at the original places of work from where they were transferred. It was, however, clarified that, those teachers who have already carried out the order of transfer will not be affected or their transfer will not be stayed pending decision of the Secretary, but they would abide by the final order which would be issued by the Secretary. Condition No.4 of the aforesaid consent terms specifically stipulated that during the period from 30th October, 1986, those teachers who have not resumed their duties at the places where they were transferred or those who have resumed duty late will be paid their salary on the basis that they were on leave, if any leave was due to them and in case no leave was due to them, they will be treated as on leave without pay and the said period shall be treated as leave period. It was also agreed that such teachers will be paid salary by the Panchayat for the period of vacation, i.e. from 30th October, 1986 onwards till the communication of the decision of the Secretary and 10 days thereafter, without being required to join at the places to which they have been transferred. It was also agreed that the petitioners of each petition shall be paid salaries upto 31st October, 1986 within two weeks from the date of the order. On aforesaid terms and conditions, the petitioners, who were the Primary Teachers before this Court, withdrew the petitions at that stage with liberty to them to move the High Court in case they were aggrieved by the orders of the Secretary.

4. It appears that, thereafter, the Secretary, Education Department, heard the respective parties and

passed the orders on 13th April, 1987 as well as on 18th June, 1987. The orders passed by the Education Secretary prima facie were in favour of the the Primary Teachers and the contentions raised and seriously agitated before the High Court thus came to be settled or decided by the Secretary by giving appropriate opportunity of being heard to the parties and after dealing with the various terms and conditions of the settlement which were reached between the parties in the High Court of Gujarat in the proceedings.

5. It appears that, pursuant to the orders passed by the Secretary, Education Department, after hearing the respective parties and their Advocates, the orders of transfers and postings were issued against the respective Primary Teachers, which the Primary Teachers have accepted and they had resumed their duties at the respective place of postings. Since the date of such postings, they continue to serve at the place where they were posted.

6. It may be noted, at this stage, that after their postings at the respective places, the Primary Teachers were being paid the appropriate salary and, even prior thereto, consistent with the consent terms, they were continued to be paid the salary till the decision was rendered by the Secretary.

7. However, it appears that, thereafter, the respective Taluka Development Officer of Banaskantha district passed the impugned orders demanding recovery of salary from the petitioners (Primary Teachers) from 30th October, 1986 till July/August 1987 or till the date they resumed duty to the respective place where they were directed to resume duty by the Secretary. Such orders of recovery of salary of Primary Teachers for the aforesaid period are under challenge in this group of petitions.

8. Mr. J.D. Ajmera and Mr. S.R. Brahmhatt, learned counsel appearing for the petitioners, have strenuously urged before this Court that they have already reached the consent terms before the Honourable High Court and having agreed to pay the salary as stipulated in the consent terms, which are reproduced hereinabove, the Competent Officer was not justified in law in ordering recovery of the salary which was agreed to be paid to them under the consent terms. They vehemently submitted before this Court that it was not their fault or the fault of the Primary Teachers that they did not remain present on duty at the respective place, but they were, in fact, carrying out the order of

the consent terms which was the order passed by the Honourable High Court on consensus between the parties. According to them, therefore, the order of recovery of salary from poorly paid Primary Teachers in these days of rising prices is highly unsustainable and deserves to be quashed and set aside.

9. On the other hand, Mr. H.S. Munshaw, who appears for the District Primary Education Officer, Banaskantha, has vehemently submitted before this Court that since the petitioners and other similarly situated Primary Teachers have not actually worked during the relevant period, the Panchayat should not be compelled to pay them the salary. He submitted that, it would amount to paying salary for no work whatsoever. This would even violate the principle of "no work no pay" and, therefore also, the Court should not entertain the request of the petitioners for getting the full salary for the period for which they did not work.

10. However, when he was confronted with the consent terms, which were reduced into writing and which were produced in this Court properly signed by the parties and based on which the group of petitions then came to be disposed of, he has to agree that it was then agreed before the Honourable High Court by the concerned Advocate representing the Panchayat that the teachers will be paid their salary from 30th October, 1986 till the date they resume duty at the place of their transfer irrespective of the fact as to whether they actually worked or not. When the Government Officer has consciously agreed to the liability of paying salary to the teachers till the dispute is decided by the Education Secretary irrespective of the fact as to whether they have carried out the order of transfer or not and when based on such consent a group of petition is disposed of by the High Court of Gujarat and when petitioner-Primary Teachers have not resumed their duties till decision is rendered by the Education Secretary, in my opinion, no fault can be laid at the doors of the Primary Teachers. On the one hand, they were not supposed to carry out the order of transfer if they had already not carried out the order of transfer and, secondly, they had agreed to abide by the order of the Education Secretary and, they had, in fact, abided by such order of the Education Secretary. It is in this situation that such teachers, who have suffered the transfer and, ultimately, carried out the orders of transfer as directed by the Education Secretary, cannot be subjected to the indirect penalty of non-payment of salary whatsoever for the period they have not worked. This would be blowing hot and cold with such

teachers because the Panchayat has in the consent terms reached before this High Court specifically agreed to pay salary to such teachers starting from 30th October, 1986 till the date they resume and now the Panchayat cannot be permitted to reprobate by stating that it is not liable to pay any salary to such teachers because they have not worked during the relevant period. When the Primary Teachers have acted upon the representation of the responsible Office of the Panchayat and they have agreed to abide by the decision of the Education Secretary and, in fact, abided by the decision of the Education Secretary, to permit the Panchayat to deduct salary of such teachers for the period for which they have not worked would amount to permitting the Panchayat to run away from the consent terms to which they were parties. In fact, the Panchayat should not have taken such a step of recovery of salary when they were parties to the earlier consent terms and they ought to have abided by the consent terms.

11. Mr. H.S. Munshaw, learned counsel appearing for the respondents has, however, submitted that these Primary Teachers having challenged their transfer and having not rendered any services whatsoever shall get their full salaries and the Panchayat would be financially burdened by paying salary to such teachers for not rendering any services whatsoever. It is no doubt true that petitioners and similarly situated Primary Teachers have not rendered services during the relevant period, but the Panchayat has consciously agreed to the payment of salary to such teachers irrespective of the fact as to whether they had worked or not. However, this Court also cannot turn Nelson's eye to the principle laid down by the Apex Court, namely "no work no pay" and, at the same time, it shall have to equally balance the concession made by the Panchayat at the time of reaching the consent terms. Having given my anxious thought to the aforesaid rival principle and to serve the best interest of the teachers as well as the revenue, in my opinion, interest of justice will be met if the District Panchayat and/or its subordinate Officer is directed to deduct salary of last two months only from the salary payable to them and the balance amount shall not be recovered. The deduction of salary of last two months as directed hereinabove shall, under no circumstances, be treated as break in service and shall be treated as continuous service of any of the petitioners or Primary Teachers who was affected by the order of the Secretary.

12. Rule is, accordingly, partially made absolute to

the aforesaid extent. There shall be no order as to costs.

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